

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6 OAKLAND DIVISION  
7

8 P. STEPHEN LAMONT,  
9

10 Plaintiff,

11 vs.

12 NOREEN T ROTHMAN, et al.,  
13

Defendants.

Case No: C 18-02997 SBA

**ORDER ACCEPTING  
MAGISTRATE JUDGE'S REPORT  
AND RECOMMENDATION AND  
DISMISSING ACTION**

Dkt. 13

14 Plaintiff P. Stephen Lamont ("Plaintiff"), acting pro se and in forma pauperis, brings  
15 the instant civil action under the Racketeer Influenced and Corrupt Organizations Act  
16 ("RICO"), 18 U.S.C. §1961 et seq. Dkt. 1. The matter before the Court is the Report and  
17 Recommendation to Dismiss for Lack of Personal Jurisdiction ("R&R") prepared by  
18 Magistrate Judge Virginia K. DeMarchi ("Magistrate Judge"). Dkt. 13. Having read and  
19 considered the papers filed in connection with this matter and being fully informed, the  
20 Court hereby ADOPTS the R&R and DISMISSES the action, for the reasons stated below.

21 **I. BACKGROUND**

22 The factual and procedural background is set forth in greater detail in the R&R. In  
23 brief, the instant action arises out of a New York state court proceeding, wherein Plaintiff's  
24 parental rights were terminated. R&R at 1-2. Plaintiff names as defendants various actors  
25 in the state court proceeding, i.e., Westchester County, the Assistant and Deputy County  
26 Attorneys for Westchester, and two senior caseworkers for the "New York State Office of  
27 Children and Maltreatment Register." Id. It is apparent that "the factual allegations,  
28 events, and people described in the complaint are in New York." Id. at 4.

---

1 As noted by the Magistrate Judge, Plaintiff has previously filed at least four other  
2 actions in this district against various New York defendants, some of whom are also named  
3 in the instant action. Id. at 3-4 (citing Lamont v. Pilkington, No. 3:17-cv-05942-WHO,  
4 Dkt. 24 (N.D. Cal. May 10, 2018) (dismissing action for lack of personal jurisdiction);  
5 Lamont v. Edwards, No. 3:18-cv-01079-WHO, Dkt. 26 (N.D. Cal. May 10, 2018) (same);  
6 Lamont v. Reyes, No. 3:18-cv-01421-WHO, Dkt. 24 (N.D. Cal. May 10, 2018) (same);  
7 Lamont v. Petrucelli, No. 5:18-cv-02790-BLF, Dkt. 12 (N.D. Cal. July 12, 2018) (same)).  
8 In addition, he has filed suits in both this district and the Southern District of New York  
9 concerning the events underlying the instant action. Id.

10 On May 22, 2018, Plaintiff filed the instant Complaint for Violation of 18 U.S.C.A.  
11 §§ 1961 et seq. Dkt. 1. Plaintiff alleges that the Court has personal jurisdiction over the  
12 defendants “because all factual allegations derive from violations of 18 U.S.C.A. §§ 1961  
13 et seq.” Id. ¶ 1. As noted by the Magistrate Judge, Plaintiff also invokes 18 U.S.C.  
14 § 1965(a) and (b) in support of his claim of proper venue. Id. ¶ 79.

15 Under 18 U.S.C. § 1965(b), a district court may exercise personal jurisdiction over  
16 nonresident participants in an alleged RICO conspiracy, even if those defendants otherwise  
17 would not be subject to the court’s jurisdiction. Butcher’s Union Local No. 498 v. SDC  
18 Inv., Inc., 788 F.2d 535, 538-39 (9th Cir. 1986). In order to establish such jurisdiction, the  
19 plaintiff must show that (1) the court has personal jurisdiction over at least one of the  
20 participants in the alleged multidistrict conspiracy; and (2) there is no other district in  
21 which a court will have personal jurisdiction over all of the alleged co-conspirators. Id.

22 On August 17, 2018, the Magistrate Judge issued the R&R, finding that Plaintiff  
23 fails to satisfy either of the requirements for jurisdiction under section 1965(b). R&R at 4-  
24 5. First, it has not been shown that *any* defendant has the requisite minimum contacts with  
25 the forum to support the exercise of personal jurisdiction. Id. at 5-6. Second, it has not  
26 been shown that no other district court would have personal jurisdiction over all of the  
27 alleged co-conspirators. Id. at 6. To the contrary, the allegations of the Complaint tend to  
28 show that the Southern District of New York would have personal jurisdiction over each of

1 the defendants. Id. The Magistrate Judge therefore recommends dismissal for lack of  
2 personal jurisdiction over the nonresident defendants. Id. at 7.

3 On August 17, 2018, Plaintiff filed an Objection to the R&R. Dkt. 14. The next  
4 day, he also filed a Memorandum of Law in support of his objections. Dkt. 15. As  
5 discussed in detail below, the Court finds that Plaintiff's objections lack merit.

## 6 **II. LEGAL STANDARDS**

### 7 **A. IFP PLEADINGS**

8 A district court may authorize the commencement of an action without prepayment  
9 of fees by a litigant who demonstrates that he is unable to pay. 28 U.S.C. §1915(a)(1). The  
10 Court has a continuing duty to dismiss such an action, however, if it determines that the  
11 action: (1) is frivolous or malicious; (2) fails to state a claim on which relief may be  
12 granted; or (3) seeks monetary relief against a defendant who is immune from such relief.  
13 Id. § 1915(e)(2)(B); see also Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc)  
14 (“It is also clear that section 1915(e) not only permits but *requires* a district court to dismiss  
15 an in forma pauperis complaint that fails to state a claim.”) (emphasis added).

### 16 **B. REVIEW OF MAGISTRATE’S R&R**

17 A magistrate judge may prepare findings and recommendations on dispositive  
18 matters without the consent of the parties pursuant to 28 U.S.C. § 636(b)(1). Reynaga v.  
19 Cammissa, 971 F.2d 414, 416 (9th Cir. 1992). Once findings and recommendations are  
20 served, the parties have fourteen days to file specific written objections thereto. 28 U.S.C.  
21 § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). A district judge must review de novo “those  
22 portions of the report or specified proposed findings or recommendations to which  
23 objection is made.” 28 U.S.C. § 636(b)(1)(C); see also United States v. Reyna-Tapia, 328  
24 F.3d 1114, 1121 (9th Cir. 2003) (“The statute makes it clear that the district judge must  
25 review the magistrate judge’s findings and recommendations de novo if objection is made,  
26 but not otherwise.”). A district judge may “accept, reject, or modify, in whole or in part,  
27 the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

1 **III. DISCUSSION**

2 As discussed above, the Magistrate Judge recommends dismissal of the instant  
3 action upon the finding that the Court lacks personal jurisdiction over the nonresident  
4 defendants. Much of Plaintiff's Objection fails to respond to the Magistrate Judge's  
5 findings and recommendations. For example, Plaintiff reiterates that "[his son] has been  
6 wrongly placed in foster care" and that "no amount of money damages will ever erase the  
7 indelible emotional scare [*sic*] that Plaintiff and [his son] will carry for the rest of their  
8 lives." Obj. ¶¶ 3, 5. These assertions go to the substance of Plaintiff's alleged injury, and  
9 do not address the threshold issue of personal jurisdiction.

10 The only matter of potential relevance in the Objection is Plaintiff's assertion that  
11 "[t]he Southern District of New York has already notified Plaintiff that they will not allow  
12 this action to proceed in SDNY for violations that occurred in State Court." *Id.* ¶ 1.<sup>1</sup>  
13 Plaintiff appears to offer this information in an attempt to refute the Magistrate Judge's  
14 finding that Plaintiff has failed to show that no other court would have personal jurisdiction  
15 over the alleged co-conspirators. Plaintiff's unsupported assertion regarding the Southern  
16 District of New York is insufficient for at least two reasons, however.

17 First, Plaintiff has made no showing that the Southern District of New York rejected  
18 his claims *for lack of personal jurisdiction*. The fact that his claims may be barred or fail in  
19 the Southern District of New York for reasons other than a lack of personal jurisdiction  
20 does not satisfy the requirements of section 1965(b). Butcher's Union Local No. 498, 788  
21 F.2d at 538-39 (there must be no other district in which a court will have personal  
22 jurisdiction over all of the alleged co-conspirators). Second, even if no other district  
23 court—including the Southern District of New York—would have personal jurisdiction  
24 over all of the defendants, section 1965(b) remains unsatisfied in this Court for want of  
25 personal jurisdiction over *at least one* defendant. *Id.* (the court must have personal  
26 jurisdiction over at least one of the participants in the alleged conspiracy). On that matter,

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff offers no evidence in support of his assertion regarding the outcome of  
any proceedings in the Southern District of New York.

1 Plaintiff does not dispute that the nonresident defendants lack the requisite minimum  
2 contacts with the forum to support the exercise of individual personal jurisdiction.

3 Plaintiff's Memorandum of Law fares no better. Plaintiff relies on World-Wide  
4 Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) for the proposition that the Court  
5 may, in its discretion, keep the action on its docket. Mem. of Law at 4. In particular  
6 Plaintiff cites the reasonableness factors set forth in World-Wide Volkswagen, arguing that  
7 these factors support the exercise of jurisdiction. The reasonableness factors are: (1) "the  
8 burden on defendant;" (2) "the forum State's interest in adjudicating the dispute;" (3) "the  
9 plaintiff's interest in obtaining convenient and effective relief;" (4) "the interstate judicial  
10 system's interest in obtaining the most efficient resolution of controversies;" and (5) the  
11 "shared interest of the several States in furthering fundamental substantive social policies."  
12 Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-77 (1985) (quoting World-Wide  
13 Volkswagen, 444 U.S. at 292). Plaintiff misreads World-Wide Volkswagen, however.

14 Personal jurisdiction is a two-pronged inquiry: "The contacts prong asks whether the  
15 defendant has sufficient contacts with the forum State to support personal jurisdiction; the  
16 reasonableness prong asks whether the exercise of jurisdiction would be unreasonable  
17 under the circumstances." Daimler AG v. Bauman, 571 U.S. 117, 144 (2014) (Sotomayor,  
18 J., concurring) (citing Burger King, 471 U.S. at 475-78). If a defendant has the requisite  
19 minimum contacts with the forum state, a court may consider the reasonableness factors set  
20 forth in World-Wide Volkswagen to determine whether the exercise of personal jurisdiction  
21 over the defendant comports with traditional notions of "fair play and substantial justice."  
22 Burger King, 471 U.S. at 476-77 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 320  
23 (1945)). "These considerations sometimes serve to establish the reasonableness of  
24 jurisdiction upon a *lesser* showing of minimum contacts than would otherwise be required."  
25 Id. at 477 (emphasis added). Nonetheless, "the fairness factors cannot of themselves invest  
26 the court with jurisdiction over a nonresident [defendant]" *without* a showing of minimum  
27 contacts. Entek Corp. v. Sw. Pipe & Supply Co., 683 F. Supp. 1092, 1097 (N.D. Tex.  
28 1988) (citing World-Wide Volkswagen, 444 U.S. at 294).

1 Here, given the absence of any showing of minimum contacts between the  
2 defendants and the forum, the Magistrate Judge correctly found personal jurisdiction to be  
3 lacking. Accordingly, IT IS HEREBY ORDERED THAT Plaintiff's objections are  
4 OVERRULED, the report and recommendation of the Magistrate Judge is ADOPTED, and  
5 the instant action is DISMISSED without leave to amend. Said dismissal is without  
6 prejudice to Plaintiff's ability to bring his claims before a court that enjoys personal  
7 jurisdiction over the defendants. The Court certifies that any appeal taken from this order  
8 will not be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). The Clerk shall  
9 terminate all pending matters and close the file.

10 IT IS SO ORDERED.

11 Dated: 8/29/18

  
SAUNDRA BROWN ARMSTRONG  
Senior United States District Judge